



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 7, 1998

Ms Mary Coker-City Secretary  
City of Tomball  
401 W Market ST STE C  
Tomball TX 77375

OR98-1600

Dear Ms Coker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code Your request was assigned ID# 116760

The City of Tomball (the "city") received a request for:

- 1 Copies of letters from Mr Gaylord Hughey to Mr Rex White cc To Mr Ben Griffin dated February 24 and 25 1998, regarding natural gas issues
- 2 Updated costs to Mr Hughey and any other consultants regarding the TX RailRD Commission filing and or costs associated with the requests for proposals
- 3 List of those individuals or companies the RFPs were sent to and which of those responded for natural gas service to the City

You ask whether the city may withhold under section 552103 the letters responsive to request number one You have submitted the two responsive letters for our review Because you do not seek to withhold any information under requests two and three we presume that you have released any records that are responsive to these requests

Section 552103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision as a consequence of the person's office or

a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

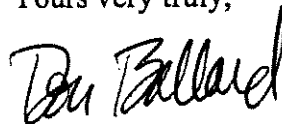
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

You explain that the city is currently involved in litigation against the Texas Southeastern Gas Co. You inform us that the letters at issue are correspondence between the city's attorney and the attorney representing Texas Southeastern Gas Co. The letters concern the pending litigation between the parties. Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and must be released. Consequently, you may not withhold the requested correspondence under section 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/nc

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Enclosures: Submitted documents

Ms. Mary Coker - Page 3

cc: Mr. L. Wayne Nagel  
12929 Zion Road  
Tomball, Texas 77375  
(w/o enclosures)